**HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 7986 OF 2005.**

Sahebkha Husenkha Pathan. ..Petitioner.

Versus.

Shaikh Amir Shaikh Ahmed & Ors. ..Respondents.

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Shri. Kishor Patil i/b Shri. P. N. Joshi for the Petitioners.

Shri. S. A. Rajeshirke for the respondent no.1.

**CORAM: S.B.MHASE, J.**

**DATE : MARCH 13, 2006.**

**P.C.**

1. Order dated 25.4.2005 in Civil Miscellaneous Appeal No. 40 of 2002 passed by the Additional District Judge, Niphad is under challenge. The said appeal was directed against the order dated 30.7.2002 passed by the Civil Judge Jr. Division, Yeola in Miscellaneous Application No. 10 of 1999. Miscellaneous application no. 10 of 1999 was filed for setting aside the ex-parte judgment and decree dated 20.12.1996 passed in R.C.S.No. 236 of 1995 and for restoration of the suit under Order - XIX Rule 13 of the Code of Civil Procedure, 1908. However, the courts have found that the cause explained was not proper and the petitioner is grossly negligent in prosecuting the matter. He was served with the notice and

he was aware of the said ex-parte decree. Learned counsel appearing on behalf of the respondent Shri. S. A. Rajshirke states that the decree has been executed and the Court Commissioner has executed the sale-deed in his favour on 24.11.2005. This statement is accepted. However, possession is yet to be taken and partly the decree has been satisfied. Since the sale deed has been executed coupled with the fact that the application for setting aside the exparte decree has been rejected for non prosecution, absence for which is not justified, this petition is without any merit. It is hereby rejected.

2. It is further transpired that the petitioner has disposed of the land while the execution was pending. Thus to the extent of the petitioner he has lost the interest in the land.

**(S.B.MHASE, J.)**